

Appl. No. 09/804,003  
Amendment and/or Reply  
to the Office Action of 14 April 2005

Page 6 of 11

## 2. REMARKS / DISCUSSION OF ISSUES

Claims 1-120 are pending in the application. Claims 14-20 are new. Claims 1, 7 and 14 are in independent form.

Unless indicated otherwise, claims are amended for non-statutory reasons: to correct one or more informalities, remove figure label number(s), and/or to replace European-style claim phraseology with American-style claim language.

### I. Rejection under 35 U.S.C. § 102(e)

Claims 1, 2, 6-8 and 12-13 were rejected under 35 U.S.C. § 102(e) as being anticipated by *Sciammarella* (U.S. Patent 6,608,633). For at least the reasons set forth above, it is respectfully submitted that these rejections are improper and should be withdrawn.

A proper rejection under 35 U.S.C. § 102(e) requires that all of the claimed elements be found in the applied art. If a single claimed element is not found in the applied art, a prima facie case of anticipation cannot be properly established.

#### A. *Sciammarella* Lacks the Disclosure of at least One Feature of Independent Claims 1, 7 and 14

Claim 1, is drawn to a method of rating database objects, and features, inter alia, "...computing a rating of a category of the first level as a function of ratings of subordinate categories of the second level."

Claims 7 and 14, which are both drawn to apparatus, include a similar feature.

In an example embodiment described in the filed application in connection with Fig. 2, a plurality of genres (or categories) and subgenres (or subordinate categories) are displayed on a TV screen. For example, a category may be 'television series' and a subordinate category of television series are 'suspense' programs. In connection with this embodiment, a rating system is disclosed, based on five levels, from -2 to +2. In this system a strong preference or like of a category or subordinate category is given a +2 rating, while a strong aversion or dislike of a

Atty. Docket No. NL000147

**BEST AVAILABLE COPY**

Appl. No. 09/804,003  
Amendment and/or Reply  
to the Office Action of 14 April 2005

Page 7 of 11

category or subcategory is given a rating of -2. Moreover, a color-coding scheme conveys the rating of a category or subordinate category.

As disclosed in the filed application, the ratings of the categories are based on the ratings of the subordinate categories thereof. In a specific embodiment, the average rating of the subordinate categories is determined to provide the rating of the respective category. For example, if there were four (4) subordinate categories to a category and two (2) of the categories were rated -1 and two (2) were rate +1, the category would be rated the average, 0, which signifies a neutral rating.

Applicants respectfully submit that the reference to *Sciammarella* lacks at least the disclosure of the noted feature of claims 1, 7 and 14. To wit, the reference to *Sciammarella* discloses a graphic user interface (GUI) that overlays an image on a screen. The GUI includes categories of television program currently available. Moreover, the GUI indicates the relative importance of the categories with respect to a measuring value through the use of scale and location. The measuring value may be the volume of programming (number of programs in a category), the frequency of use (how frequently a category is watched) as well as other measures.

Furthermore, the reference to *Sciammarella* also discloses the display of subcategories of a category on the GUI. In the disclosure surrounding Fig. 6 of *Sciammarella*, the 'Sports' category is selected and all of the subcategories of 'Sports' have been selected and are thus displayed for further selection.

Finally, the reference to *Sciammarella* discloses that "...information concerning volume of programming and frequency of use can be provided to the viewer, in the same manner this information for categories is provided to the viewer." (Kindly refer to column 6, lines 61-65 of *Sciammarella*). Thus, the reference to *Sciammarella* discloses that two of the measuring values may be provided with the subcategories of the 'Sports' category in the same manner that this information is provided with the 'Sports' category. Stated differently, just as the category 'Sports' is projected to be larger in appearance (e.g., larger typeset) to the viewer than the category 'News' in Fig. 4 to convey that the relative volume of 'Sports' programs is larger than that of 'News' shows, so too can the subcategory 'football' be made

Atty. Docket No. NL000147

**BEST AVAILABLE COPY**

Appl. No. 09/804,003  
Amendment and/or Reply  
to the Office Action of 14 April 2005

Page 8 of 11

larger than the subcategory 'boxing' to show the relative volume of 'boxing' and 'football' programs.

However, the reference does not disclose *computing a rating of a category of the first level as a function of ratings of subordinate categories of the second level*. To this end, the reference to *Sciammarella* merely discloses that a measured value can be displayed in connection with subcategories in the same fashion (e.g., larger typeset to convey a larger measured value) as they are displayed in connection with categories; but does not disclose the *computation of a rating of a category of a first level as a function of the ratings of the subordinate category*. (Kindly refer to column 5, lines 5-55 and column 6, lines 8-65 of *Sciammarella* for support for the above assertions.)

Finally, at page 4 of the Office Action, and relying on column 6, lines 53-65, the Office asserts that the 'all' subcategory gives the user the option to use the rankings from all subcategories to compute the total ranking of the category. Applicants respectfully disagree. As noted previously, the reference to *Sciammarella* discloses that the 'all' subcategory shows all subcategories of a category on the display. Moreover, at column 6, lines 61-65, *Sciammarella* discloses that the information concerning volume of programming and frequency of use may be provided to the viewer in the same manner that this information for categories is provided to the viewer. This manner of providing the information is the manner in which the information is displayed (e.g., larger graphics for a category with greater relative volume). However, this in now way is the same as the computation of a rating as recited in claims 1, 7 and 14.

For at least the reasons set forth above, it is respectfully submitted that the reference to *Sciammarella* lacks at least one of the features of claims 1, 7 and 14. As a result, a proper *prima facie* case of anticipation based on *Sciammarella* has not been made and the rejection of claims 1, 7 and 14 is improper and should be withdrawn. Therefore, claims 1, 7 and 14 and the claims that depend therefrom are patentable over the applied art. Allowance is earnestly solicited.

Atty. Docket No. NL000147

**BEST AVAILABLE COPY**

Appl. No. 09/804,003  
Amendment and/or Reply  
to the Office Action of 14 April 2005

Page 9 of 11

**B. The Computation of the Rating of Claims 2, 8 and 15 is not Inherent in the Teachings of Sciammarella**

The beseechment of allowance of claims 2, 8 and 15 notwithstanding, Applicants respectfully submit that the rejection of these claims based on inherency is improper.

Claims 2 features "...the rating of the category of the first level is computed as the average of the ratings of subordinate categories of the second level."

Claims 8 and 15 include similar features.

The Office asserts that the computation "...using an averaging function is inherent since the rankings must be computed somehow in order to give an average interpretation of the category ranking based on subcategory ranking." (See, for example, page 4 of the Office Action.)

To establish inherency, *extrinsic evidence* must make clear that the missing descriptive matter is *necessarily present* in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. However, inherency may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances *is not sufficient*.

The assertion that the computation using an average of the rankings of the subordinate categories is inherent in *Sciammarella* is without merit. As noted above, *Sciammarella* does not effect a computation of the ranking of the category and thus cannot disclose computation based on an average based on subcategory rankings. However, assuming arguendo that the reference to *Sciammarella* did include the computation of the ranking, it is respectfully submitted that the rating is not necessarily computed via an average of the subcategory rankings as other methods are clearly possible to effect this computation. As such, the Office has failed to show that the computation must be based on an average of subcategory rankings. Accordingly, a proper rejection based on inherency has not been made.

For at least the reasons set forth above, it is respectfully submitted that sufficient evidence in support of the assertions of inherency has not been provided. If the assertions of inherency set forth in the Office Action are based on personal

Atty. Docket No. NL000147

**BEST AVAILABLE COPY**

Appl. No. 09/804,003  
Amendment and/or Reply  
to the Office Action of 14 April 2005

Page 10 of 11

knowledge of the Examiner, an affidavit under 37 CFR § 1.104(d)(2) is respectfully requested. Otherwise, some other form of extrinsic evidence in support of this assertion is respectfully requested. If evidence in support of the assertions of inherency are not provided it is respectfully submitted that the rejections based on inherency should be withdrawn.

## II. Rejection under 35 U.S.C. § 103(a)

Claims 3-5 and 9-11 were rejected under 35 U.S.C. § 103(a) as being obvious in view of *Sciammarella* and *Lemmons* (U.S. 6,481,011). For at least the reasons set forth above, it is respectfully submitted that the claims from which the present claims depend are patentable over the applied art. Therefore, and while in no way conceding to the propriety of the present rejection under 35 U.S.C. § 103(a), Applicants respectfully submit that claims 3-5 and 9-11 are patentable over the applied art. Allowance is earnestly solicited.

## III. Conclusion

In view of the foregoing, applicant(s) respectfully request(s) that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance. If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and further replies to charge payment or credit any overpayment to Deposit Account Number 50-0238 for any additional fees, including, but not limited to, the fees under 37 C.F.R. §1.16 or under 37 C.F.R. §1.17.

Atty. Docket No. NL000147

**BEST AVAILABLE COPY**

Appl. No. 09/804,003  
Amendment and/or Reply  
to the Office Action of 14 April 2005

Page 11 of 11

Respectfully submitted,



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Atty. Docket No. NL000147

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